



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking to Update, Clarify and
Recodify Rules of Practice and
Procedure.

Rulemaking 06-02-011

**REPLY COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
RE DRAFT DECISION OF ADMINISTRATIVE LAW JUDGE YACKNIN**

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

The Division of Ratepayer Advocates (DRA) submits these Reply Comments to address an issue raised by the California Water Association (CWA) in its Comments to the Draft Decision of Administrative Law Judge (ALJ) Yacknin. CWA asks that the Draft Decision be changed to impose a 15-day limit for requesting an “equal time” ex parte meeting. Adoption of CWA’s proposed change would be legal error. The Ex Parte rule proposed as Rule 8.2(c)(2)(ii) should be adopted as written by ALJ Yacknin in the Draft Decision.

II. DISCUSSION

CWA argues that Proposed Rule 8.2(c)(2)(ii) should be revised to impose a 15-day time limit for parties to request an equal time individual meeting with a decision-maker. The original version of Proposed Rule 8.2(c)(2)(ii) contained this restriction. DRA and TURN opposed the restriction, and the Draft Decision removed it.

CWA states that “DRA and TURN object to setting a time limit for parties to request such individual meetings, because it may bar persons who become parties after the time for requesting an individual meeting from exercising their ‘right’ to such a

meeting.” (CWA, pp. 2-3.) CWA then goes on at length about various ways in which parties can “game” the process for “strategic reasons.” (Id.)

DRA’s opposition to the time restriction in the proposed rule was, and is, based on the specific right granted parties by the underlying statute. CWA’s explanation of how to game the system is, thus, not just speculative, but ultimately irrelevant.

Section 1701.3(c) of the Public Utilities Code sets forth certain requirements relating to ratesetting cases. For ex parte communications in ratesetting cases, Section 1701.3 provides, in part:

Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days notice.... *If an ex parte communication meeting is granted to any party, all other parties **shall** also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted.* In no event shall that notice be less than three days. ... (emphasis added.)

Section 1701.3(c), thus, requires that other parties be given equal time to meet with a Commissioner if one party has been granted such a meeting. Section 1703.1 does not include any restrictions on when the equal time meeting should be requested or held.

CWA’s Proposed Rule 8.2(c)(2)(ii) would add a restriction to the equal time provision with the following:

any other party shall be granted an individual meeting of a substantially equal period of time with that decisionmaker, *provided that the party makes the request within 15 days of the notification.* (emphasis added.)

No authority DRA is aware of authorizes the imposition of such a requirement. Certainly, CWA has cited none. Restricting equal time meetings, as CWA would have the Commission do, could result in a party losing a right that has been guaranteed by statute. DRA, therefore, recommends that CWA’s proposal be rejected and Rule 8.2(c)(2)(ii) be adopted as it appears in the Draft Decision:

any other party shall be granted an individual meeting of a substantially equal period of time with that decisionmaker.

The Draft Decision's ex parte rule is consistent with the rights provided by statute, and should be adopted.

III. CONCLUSION

For all the foregoing reasons, DRA recommends that the Commission adopt the Draft Decision's Rule 8.2(c)(2)(ii) which follows the law requiring equal time ex parte meetings without restriction.

Respectfully submitted,

/s/ LAURA J. TUDISCO

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July 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY
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/s/ ALBERT HILL
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